

September 21, 2007

The Honorable William H. O'Dell  
Member, South Carolina Senate  
Box 540  
Ware Shoals, South Carolina 29692

Dear Senator O'Dell:

We received your letter requesting an opinion as to whether a particular individual is eligible to serve on the South Carolina Department of Transportation's Commission ("SCDOT Commission"). Per your letter, you inquire as to Marion Carnell, who currently serves as a commissioner, "will be eligible for election to the commission under the new structure of the commission as adopted."

#### **Law/Analysis**

In Sloan v. Hardee, 371 S.C. 495, 640 S.E.2d 457 (2007), the South Carolina Supreme Court addressed whether members of SCDOT Commission may serve consecutive terms. In that decision, the Court examined section 57-1-320 of the South Carolina Code, which at the time stated:

(B) No county within a Department of Transportation district shall have a resident commission member for more than one consecutive term and in no event shall any two persons from the same county serve as a commission member simultaneously except as provided hereinafter.

(emphasis added). The three SCDOT Commission members against whom the case was brought argued "the term 'consecutive,' permits a commissioner to serve one term, consecutive to a first term such that the commissioners may actually serve two successive terms." Id. at 499, 640 S.E.2d at 459. However, the Court disagreed finding

[t]o construe the phrase “consecutive” as meaning a term, consecutive to a first term, would result in the phrase “two consecutive terms”, in actuality, meaning two terms consecutive to a first, for a total of three terms. To construe the statutes as asserted by Appellants would produce an absurd result.

Id. at 499-500; 640 S.E.2d at 459. Accordingly, the Court held “section 57-1-320(B) prohibits a DOT Commissioner from serving a consecutive term of office.” Id. at 500, 640 S.E.2d at 460.

As you mentioned in your letter, the Legislature recently passed comprehensive legislation restructuring the South Carolina Department of Transportation. 2007 S.C. Acts No. 114. However, SCDOT Commission continues to consist of seven members, six of which are elected by the delegations representing the six transportation districts and one member appointed by the Governor. Id. Furthermore, section 57-1-320 of the South Carolina Code, despite the numerous amendments to chapter 1 of title 57 of the South Carolina Code, remains unchanged and continues to provide:

(A) A county that is divided among two or more Department of Transportation districts, for purposes of electing a commission member, is deemed to be considered in the district which contains the largest number of residents from that county.

(B) No county within a Department of Transportation district shall have a resident commission member for more than one consecutive term and in no event shall any two persons from the same county serve as a commission member simultaneously except as provided hereinafter.

The Legislature is presumed to be aware of the Supreme Court’s interpretation of its statutes. Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 111, 580 S.E.2d 100, 106 (2003). Yet in its numerous amendments to chapter 1 of title 57, the Legislature chose not to amend 57-1-320, while having knowledge of the Court’s decision in Sloan. Thus, we are of the opinion that Court’s finding that section 57-1-320(B) prohibits a member of the SCDOT Commission from serving more than one term remains applicable despite the new structure of the SCDOT. Furthermore, we note this provision prohibits commissioners from the same county from serving consecutive terms.

In a conversation with you, you informed us that Mr. Carnell has already been elected to one full term as a member of the SCDOT Commission. Thus, in light of the Court’s decision in Sloan,

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we believe he is not eligible to serve another term despite the Legislature's amendments to chapter 1 of title 57.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General